

FREMONT PLANNING BOARD

August 24, 2005

Meeting Minutes

Present: Chairman Kevin Herrmann, Co-Chairman Peter Gibb, Mark Pitkin, Selectmen's rep. Peter Bolduc, Building Inspector Thom Roy, Conservation Commission rep/Alternate Jack Karcz, Alternate Larry Stilwell and recording Secretary Meredith Bolduc.

Mr. Herrmann called the meeting to order at 7:30 p.m.

Mr. Holmes made the motion to allow Mr. Stilwell voting rights for anything that comes before tonight's meeting.

Motion seconded by Mr. Pitkin with unanimous favorable vote.

Mr. Herrmann reported that he is planning to take a leave of absence from the Planning Board. He will issue a letter to the Selectmen to that effect. After some discussion Mr. Bolduc made the motion to have Mr. Stilwell step up as a full board member. Motion seconded by Mr. Holmes and Mr. Stilwell accepted. The Selectmen will be so notified.

FRED & JOYCE LECLAIR
Map2 Lot 077-1

PUBLIC HEARING
SUBDIVISION

Present: Owners Fred & Joyce LeClair, representing surveyor Kevin Hatch of Cornerstone Survey, abutter Debbie Didonato. Also present David Twiss and Lisa Ross.

Peter Bolduc removed himself from the Board for this case as he is an abutter.

Mr. Herrmann opened this Public Meeting at 8:30 p.m. and read the notice of the meeting which was as follows:

In accordance with NH RSA 675:6 and 675:7, you are hereby notified that the Fremont Planning Board will hold an Abutters/ Public Hearing on Wednesday, August 24, 2005 at 8 pm at the Fremont Town Hall to consider an application from Fred & Joyce LeClair for a two (2) lot subdivision of Map 2 Lot 077-1. The applicants propose to create a new three (3) acre lot to be known as Map 2 Lot 077-1-2 and retain fifty three (53) acres with the parent lot located on Red Brook Road and Route 107.

It was noted that this hearing was noticed on July 29, 2005 at the Fremont Post Office and Fremont Town Hall and in the August 12, 2005 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on July 29, 2005 and all

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returns have been received.

Comment sheets were received from:

Health Officer Trudie Butler = no objections

Fire Chief Heselton = *"would like to know distance to water supply and driveway location and how long are driveways"*

Fremont Conservation Commission = *"there does not appear to be any wet issues therefore the Conservation Commission has no comment. If wetland/aquifer issues are present please advise the Conservation Commission and schedule a meeting and site visit"*.

Fremont Road Agent = *"no problems"*

There is comment from abutter Magnusson *"OK with us"* written on the public notice he received and returned.

(see file for all comment sheet correspondences)

Also received was the NHDES approval for subdivision approval # SA2005006304.

Mr. Herrmann read the letter of intent from Kevin Hatch of Cornerstone Survey. The Board reviewed plan # 05-867 drawn by Cornerstone Survey Associates and dated May 2005. The plan showed the entire 56 acre property divided into one 53 acre lot and one 3.03 acre lot, wetlands delineations, distances from site to school, fire and police stations. Mr. Hatch presented a plan that differed from the one submitted with the application in that the well and septic are shown to be outside of the wetland setback. Mr. Roy noted that the well is within 100' of the wetland in the original plan submitted. Mr. Hatch stated that the updated plan shows both to be outside of the 100' wetland setback. He added that soil scientist stamp will be on the final plan. In answer to questions by the Board Mr. Hatch stated that this is not the lot containing the cell tower, there are wetlands in the back of the property which are delineated on the plan, note #2 on the plan states that the intent of plan is go subdivide the existing 56 acre lot into 2 single family lots and note #5 on the plan states that the property is in the Aquifer Protection District.

Mr. Hatch presented a waiver request list which the Board reviewed.

Mr. Stilwell made the motion to approve the following requested waivers for the remaining 53 acre parcel from the following subdivision regulations:

Article 3 Section 3-C – surveyed property lines; D- area total for area left in natural state, wetlands, recreation area and area used; E- topographical contours; and H- wetland scientist stamp; L – requiring High Intensity Soil Survey (HISS).

Article 3 Section 4-C- new parcel needs area total for area left in natural state, wetlands, recreation and area used; D– wetland delineation, E- proposed grades; & I – street system sketch.

Motion seconded by Mr. Gibb with unanimous favorable vote.

Mr. Hatch stated that the proposed driveway complies with Article III Section 10.02 for 250' site distance.

Mr. Holmes made the motion that, based on the information presented and pursuant to

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plan # 05-867 drawn by Cornerstone Survey Associates and dated May 2005, the Fremont Planning Board approve the requested subdivision of Fred & Joyce LeClair for Map 2 Lot 077-1, including all approved waivers, with the following conditions.

1. Plan set furnished with well and septic outside the wetland boundary.
2. Wetland Scientist stamp on the plan

Motion seconded by Mr. Holmes with unanimous favorable vote.

Mr. Pitkin made the motion to close this Public Hearing at 9 pm.

Motion seconded by Mr. Holmes with unanimous favorable vote.

WALTER & SANDRA SADLIER
Map 2 Lot 156-1.11

PUBLIC HEARING
WAIVER TO SUBDIVISION

Present: Owners Walter & Sandra Sadlier, abutters Brande McLean, Diane Lucas, Bob Garside, Lois Garside; neighbors Warren Yee, Jon Foye, Jim Michaud, Ed & Lisa Brykzyk, Lisa Page, Michele Brunnemeyer. Also present: David Himmer

Mr. Herrmann opened this Public Meeting at 9 p.m. and read the notice of the meeting which was as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Planning Board will hold a Public Hearing at 8:45 pm on August 24, 2005 at the Fremont Town Hall for Walter and Sandra Sadlier of 24 Andreski Drive, Map 2 Lot 156-1.11, Fremont NH.

The applicants are seeking a waiver to note #5 on the plan of East Evergreen Estates Subdivision, Phase 1, approved by the Planning Board on September 7, 1988. Note #5 on the plan states "Proposed subdivision is for single family dwellings." The applicants wish to construct an in-law apartment at their 24 Andreski Drive residence, pending and in conjunction with Zoning Board of Adjustment action.

It was noted that this hearing was noticed on August 12, 2005 at the Fremont Post Office and Fremont Town Hall and in the August 12, 2005 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on August 12, 2005 and returns have been received except for abutters Page, Madore, Yee Family Trust, Brylczyk, Green Rev. Trust, Campbell and Garside.

Comment sheets were received from:

Fire Chief Heselton = "no comment"

Fremont Conservation Commission = "no comment"

Fremont Road Agent = noted concerns relative to the driveway width and turn-around

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(see file for all comment sheet correspondences)

Also received and reviewed was a hand delivered from Michelle A. Bunnemeyer, Esq. was a package containing an August 22, 2005 letter to the Planning Board relative to the requested waiver request by the Sadliers. Attorney Bunnemeyer read the letter which contained QUOTE THE CONTENTS HEADINGS OF THE LETTER.. a copy of the East Evergreen Estates Irrevocable Protective Covenants, a copy of the Evergreen Estates Subdivision Resident's Petition and a June 14, 2005 correspondence to the Chairman of the Zoning Board of Adjustment.

Mrs. Bolduc noted that this case is now before the ZBA. ZBA cannot go forward until or unless the PB approves the waiver to the note #5 on the already subdivision plan. There was a July 20, 2005 issuance from Town Counsel John Ryan that states his opinion " In order that this condition no longer apply to the lots within the subdivision the Planning Board would have to vote to approve a waiver of this condition which would then apply to all of the lots."

Mr. Roy stated that the provision in the Zoning Ordinance provides for protection through the Zoning Board of Adjustment (ZBA). If the Planning Board does not remove the note the ZBA is restricted from doing its function as they cannot take jurisdiction to approve or deny the request.

He noted that the purpose of this hearing is for the Planning Board to decide whether to remove the note on the plan. Mr. Roy stated that anyone has the right to go to ZBA for appeal.

Atty. Bunnemeyer stated that she has reviewed the Subdivision Regulations and it is her opinion that if the Planning Board were to waive notes on the plan would set a precedent that anyone in any subdivision could convert single family housing to multi family units. She stated that she bought property in the neighborhood because of the single family status of the development and she is opposed to allowing second units which would change the nature of the neighborhood. She agreed that the Planning Board does not have jurisdiction over covenants, but stated that she feels the Planning Board does not have the jurisdiction to even grant the waiver request.

Several abutters voiced concern that removal of the note from the plan could then open up all single family lot subdivisions in the town to additional living and/or rental units.

Mrs. Sadlier stated that she has gone before the Zoning Board as they were asked to do. She reported that there is another property within this subdivision that already has an apartment and the covenants have never been enforced since they were established in 1988 or 1989.

Mrs. McLean stated that no-one opposed the in-law apartment that currently exists. Mrs. Burylchk stated that a potential rental could affect her property. She added that the existing in-law apartment does not have a separate entrance. Mrs. Sadlier answered that the apartment she is proposing would not have an outside entrance. John Foy stated that as a neighbor he has no problem with the proposal.

Mr. West suggested that perhaps the Board would like to table the decision and seek counsel's opinion relative to possible precedent setting. Mr. Herrmann re-read the Town Counsels opinion and stated that it is his take that Attorney Ryan feels the Planning Board has the jurisdiction to make a decision. Mr. West feels that the Board needs to ask for a broader implication relative to how this affects any conditions on any plan. Mr. Roy offered that counsel has already issued an opinion.

Mr. Bolduc stated that the note could have been put on the plan by the developer or by Planning Board instruction. There was a discussion relative to the already existing second dwelling unit. Mr. Bolduc asked if when subdivisions are approved after this what would be the purpose of requiring a note on the plan for single family dwellings. Mr. West and Mr. Bolduc stated that if the note were to be removed it could affect all town subdivisions.

Mr. Herrmann stated that the issue before the Board is whether the Planning Board will vote to remove a note on an already approved subdivision plan. He feels that the applicants meeting with the ZBA allowed them the opportunity to state their case. Mr. Herrmann feels that the 1988 Planning Board approved a plan with notes and at that point it was a done deal. The ZBA cannot override the Planning Board action. Mr. Herrmann stated that the question is not that the applicant is being denied due process, the question is whether the Planning Board wants to vote to remove a note on an already approved subdivision plan.

It was stated that there is no history of the Planning Board ever waiving a note on an already approved plan.

Mr. Roy noted that if a note states that the subdivision is restricted to single family dwellings then there is also a question of whether Site Plan Review could be approved for a business. Mr. Holmes stated that there have been single family lot subdivisions approved where an owner has done Site Plan Review for a business.

Mr. Gibb stated that there has been a realized benefit to the single family dwelling, but he is disappointed to hear that there is already an apartment in the subdivision. What is before the Board tonight is the note #5 and it seems that there is already expansion in the subdivision.

Mr. Herrmann stated that the options for this Board are to vote to deny, approve or table for additional information from Counsel.

Mr. Holmes made the motion to table the decision for the purpose of getting more information from the Town Counsel.

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The motion was seconded by Mr. Stilwell.

Mr. Holmes amended his motion to continue this Public Hearing to 8 pm on September 28, 2005.

The motion was seconded by Mr. Stilwell with favorable vote except for Mr. Gibb who opposed.

Mr. Sadlier stated that he no longer wishes to seek the Variance. Mrs. Sadlier issued written withdrawal of their application for a Variance dated August 24, 2005.

Mr. Pitkin made the motion to close this Public Hearing at 10:10 pm.

Motion seconded by Mr. Stilwell with unanimous favorable vote.

FREDERICK & JENNIFER MERRILL
Map 3 Lot 146

PUBLIC HEARING
Site Plan Review

Present: Owners Frederick and Jennifer Merrill, abutter David Himmer

Mr. Herrmann opened this Public Hearing at 10:10 p.m. and read the notice of the Public Hearing which was as follows:

You are hereby notified of an Abutters/Public Hearing to be held on Wednesday August 24, 2005 at 9 P.M. at the Fremont Town Hall concerning a Site Plan Review for Frederick and Jennifer Merrill to allow the operation of a trucking business known as F. M. Merrill Trucking from their residence located at 259 Main Street, Fremont, NH, Map 3 Lot 146.

It was noted that this hearing was noticed on August 3, 2005 at the Fremont Post Office and Fremont Town Hall and in the August 5, 2005 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on August 4, 2005 and all returns have been received.

The application included a cover letter, 6 sets of plans, abutters list, proper check amount, list of waiver, the signed checklist certifying that the application meets all zoning regulation requirements and a copy of the subject deed.

The Board received a copy of a July 14, 2005 correspondence from the Selectmen to Mr. Merrill advising him of a recently received written complaint about the hazard caused by his trucks being parked at the edge of his property creating poor visibility onto Route 107 from Sandown Road. The correspondence further advised him that any non-residential use of property in Fremont requires Site Plan Review and directed him to contact the Planning Board to establish a meeting.

Mr. Herrmann stated that he has noticed a for sale sign at the property and asked the applicants if they still wish to go forward with the application. They stated that they did.

Comment sheets were received from:

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Fremont Conservation Commission = *“the Conservation Commission would recommend against the continuation of parking trucks on this location, not only for the safety issues that have been raised, but due to the proximity to the river and the runoff from the leaking fuel/oil into the river.”*

Fremont Fire Chief = *“only concern is vision looking north on Main Street or any oil leakage into the Exeter River.”*

Fremont Police Chief: *The trucks parked at this location have been a source of many complaints from people turning onto Main Street from Sandown Road. The trucks block the view of the north side of the intersection. These trucks are parked on the Merrill property and not in the State right-of-way.”*

Fremont Road Agent: In brief, the Road Agent, Guerwood Holmes, notes that he has received a lot of verbal complaints relative to the trucks parked at the Merrill property. Secondly, the Town should find out who from the State made the determination and statement to the Police Chief that “inside the telephone pole is outside of the State right-of-way”. He added that “the pole is only about 5’ from the pavement and we need to know where the right-of-way is.” He noted that documents should be provided by the State relative to the street right-of-way.

(see all comment sheets in file)

The Board is in receipt of Mr. Merrills 2001 State of NH driveway permit. It was noted that the driveway has nothing to do with the area that a truck is parked.

Mr. Merrill stated that he does not operate a business from the property. He does own the truck, but he is leased to another company. He added his second truck has been sold and that the limousine parked in his yard is a personal vehicle. Mr. Merrill stated that there would only be one truck parked in the forward area of the parking area and on occasion the trailer would be there, too.

Mr. Herrmann wondered how this is different from the bus driver who parks his bus in his driveway. There was a discussion relative to whether there is a business that warrants Site Plan Review.

Mr. Holmes made the motion that this applicant does not need site plan review.

Motion seconded by Mr. Pitkin with unanimous favorable vote.

There was a discussion relative to complaints of diminished site distance north on Rt 107 from Sandown Road caused by the large truck parked at the corner of the Merrill property. It was the consensus of the Board that any safety issues fall under the jurisdiction of the Police or Selectmen. Mr. Bolduc noted that it may also be a State issue.

Abutter David Himmer stated that he has a concern with a tractor trailer truck belonging to Mr. Merrill that has been parked in a widened area across RT 107 from the Merrill residence, on his side of the road which is actually a deceleration lane for Hall Road, not off-street parking. He added that the state approved the entrance with a 400’ line of site and with the truck parked there the site distance is greatly diminished.

Mr. Holmes made the motion to close this Public Hearing at 10:35 pm.

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Motion seconded by Mr. Gibb with unanimous favorable vote.

SHAWN SENTER

Map 3 Lot 169-59-18

The Board received and reviewed the mylar and plans for the recently approved Lot Line Adjustment for Shawn Senter, Map 3 Lot 169-59-18. They were signed by the Chairman and members and will be recorded at the Rockingham Registrar of Deeds within 3 business days. The proper check amounts were received.

MINUTES

Mr. Gibb made the motion to amend the minutes of the August 17, 2005 as follows: Page 2 paragraph 3 under Senter delete “entire property”; page 3 under Governors Forest change “happy” to “satisfied”; page 4 paragraph 2 under Budget relative to build-out study grants change “95” to “93”; and under Budget change “master plan update” to “zoning”.

Motion seconded by Mr. Pitkin with unanimous favorable vote except for Mr. Herrmann, Mr. Cocci and Mr. Holmes who abstained as they were not present at that meeting.

Mr. Gibb made the motion to approve the minutes of the August 17, 2005 meeting as amended. Motion seconded by Mr. Pitkin with unanimous favorable vote except for Mr. Herrmann, Mr. Cocci and Mr. Holmes who abstained as they were not present at that meeting.

COPP/HUTCH

Map 2 Lot 151.5

Mr. Gibb made the motion to recommend the reduction of the road bond for Kenniston Lane of the Copp/Hutch project from \$91,486 to \$37,290, as per the recommendation of the Town Engineer.

Mr. Holmes seconded the motion with unanimous favorable vote.

COOPER’S FOREST/COOPER’S CORNER

Map 3 Lots 037 & 054-1

Mr. Gibb made the motion to recommend the reduction of the road bond for Spaulding Road and Frost Lane for allowance for work completed in the amount of \$524,461, as per the recommendation of the Town Engineer.

Mr. Holmes seconded the motion with unanimous favorable vote.

The Board received a copy of an August 19, 2005 from Bill Rollins of Vollmer Associates noting some concerns relative to the Redi Rock retaining wall at the BEBO Arch Bridge before he can recommend the proposed substitution to the Planning Board.

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PLANNING BOARD BUDGET 2006

The Board reviewed a copy of the 2005 general ledger provided. There was also a discussion relative to the collective feeling that the day-to-day operations of the Board should be funded by Planning Board revenue from fees, but the planning portion such as matching grants, the RPC Circuit Rider, RPC dues and consulting should be the responsibility of the Town.

There was further discussion relative to the increased activity and responsibilities of the existing land use office leading toward the need for additional office time. This change would be from part time to full time office position for land use boards including the Planning Board, Zoning Board, Conservation Commission and some aspects of the Code Enforcement office as well as some other duties such as the Flood Insurance Program. The Board was in full agreement.

Mr. Holmes made the motion that the Planning Board support the concept of a full time land use clerical support person. Motion seconded by Mr. Stilwell with unanimous favorable vote.

There was a discussion relative to Planning Board and regulation fees. There was also a discussion relative to Impact Fees and the Capital Improvements Program. Mr. Stilwell pointed out that the money going toward the school will soon be incorrect so the CIP needs to be reviewed.

Future land use planning as per the Visioning Chapter of the Master Plan was discussed. The goal would be to have some sort of a zoning ordinance relative to future districting for the March 2006 meeting. Mr. Stilwell agreed to be the Planning representative at the Future Land Use meetings.

CORRESPONDENCE

The Board reviewed all correspondences including:

1. The Selectmen's August 11, 2005 meeting minutes.

Mr. Bolduc made the motion to adjourn at 10:55 P.M.
Motion seconded by Mr. Stilwell with unanimous favorable vote.

Respectfully submitted,
Meredith Bolduc, Secretary